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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 002674

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SUBJECT: SUBJECT: CODEL DASCHLE CODEL: TOWARD A BETTER UNDERSTANDING OF THE APPLICATION OF SHARI'A IN NIGERIA.

REF: ABUJA 2506

Classified by Ambassador Howard F. Jeter; ReasonS 1.5 (B) and (D).

1. (C) Summary: On August 31, Codel Daschle met attorney Hauwa Ibrahim (strictly protect) for a brief on the Amina Lawal case (reftel) and to receive a general primer on the legal and constitutional issues arising from the application of criminal Shari'a in twelve Northern Nigerian states. Ibrahim stressed that her efforts were not to undermine Shari'a but to make sure Shari'a was correctly interpreted and applied and that the decisions of the Shari'a courts complied with constitutional guarantees of due process and against cruel punishment. Ibrahim explained the political minefield that Shari'a has become at all levels of government, exposing why each branch hopes the other will render the difficult decisions. Ibrahim also confided that she feared for her safety because of the high profile stance she has taken, but stated that she would soldier on in her legal campaign. End Summary.

2. (C) On August 31, Hauwa Ibrahim updated Codel Daschle on the Amina Lawal case and other relevant Shari'a issues. Ibrahim was accompanied by Dr. Kole Shettima, an Islamic scholar. Ms. Ibrahim summarized for Senators Daschle, Nighthorse Campbell, Reid and Bingaman her four-pronged defense of Lawal, which she described as based on the facts of the case, constitutional law, criminal procedure, and proper interpretation of Shari'a (reftel).

3. (C) Ibrahim stressed her desire to see Shari'a Law applied properly in Shari'a States. Emphasizing the need for those accused under the new Shari'a laws to have legal counsel, she believed the defendants who have attorneys were being treated much better than those who did not. She told the Senators about eleven minors whose theft convictions carry the sentence of hand amputation (none of which has been carried out). Working pro bono, Ibrahim stated that she only had the resources to defend four of the eleven cases. These four have been acquitted, but the other, attorney-less seven are still incarcerated awaiting the outcome of their cases. Ibrahim also informed the Senators that she had been able to quickly settle several other adultery cases against women, with the defendants either being acquitted or paying minimal fines. She said she was following the progress of three other adultery cases which had recently been reported in the media.

4. (C) Ibrahim explained the difficulties faced in defending cases in some of the Shari'a jurisdictions. Criminal procedure and legal codes are different in each of the 12 Shari'a States. Some, such as Kaduna and Sokoto, have both criminal and procedural codes, while others, such as Katsina State, only have the criminal code. Responding to a question from the Senators about the role of the federal government, Ibrahim stated that the GON could do little at this point. While the Attorney General has publicly criticized harsh Shari'a punishments, the constitution did not empower him to seek an advisory opinion in federal court, against the constitutionality of Shari'a punishments. Moreover, the GON cannot prohibit states from enacting Shari'a laws. Shari'a is recognized in the Federal constitution and enacting Shari'a is well within the ken of State's rights and powers. Right now the only thing the GON could do is watch as cases wound their way through the court system. For instance, the Lawal case was now before the highest Shari'a Court in Katsina State. Should that court uphold the conviction, Ibrahim was committed to seeking relief at the Federal Court of Appeals. At that juncture, the Ministry of Justice could perhaps enter the case. Ibrahim believed that neither the Obasanjo Government nor most Northern governors supported these harsh penalties, but none would publicly condemn the punishments, fearing a political backlash in the North for being seen as anti-Shari'a. (Comment: Ibrahim correctly pointed out the political quandary faced by the Northern governors as well as President Obasanjo. A born-again Baptist Christian, Obasanjo has made his opposition to what he calls "political Shari'a" known. Any move that Obasanjo

would make would be seen, not as an attempt to spare a life or protect the constitution, but as confirmation that he was anti-Islamic and anti-North. It would spark strong reaction in many quarters. Consequently, the President would like to avoid seeing a petition to commute a Shari'a sentence reach his desk. It would be better for him and for political tranquility if the issue of cruel and unusual punishment were conclusively decided by the courts. End Comment.)

15. (C) Throughout the meeting Ibrahim returned to the theme of standing up for the legal rights of the most vulnerable in society. However, she chafed at being portrayed in the print media, which is mainly based in the Christian South, as anti-Shari'a. She denied this claim stating she is pro-due process and that such labels put her in personal danger and further complicated the task of representing Amina Lawal and others.

Comment

16. (C) The meeting with Ibrahim again underscored the inchoate development of Shari'a jurisprudence in Nigeria. The criminal Shari'a system is new and fraught with uncertainties. Aspects of the substantive criminal code do not match with procedural codes in those states which have both codes. Many local judges only have a superficial, mechanistic approach to application of Shari'a law, missing the important tenets of tolerance and equity that are major aspects of Islamic jurisprudence. The relationship of Shari'a to the federal constitution must also be defined. Muslim human rights activists and attorneys like Ibrahim, must be at the forefront of attempts to reconcile the application of Shari'a in Nigeria with internationally recognized precepts of fundamental human rights. We should support them in carrying out this task.

JETER